IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

AS.No. 571 of 1992()

OS.470/1983 of PRL.SUB COURT, KOZHIKODE
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APPELLANT IST DEFENDANT:

P.C.V. RAJA, S/O. KUTY ANUJATHY THAMPURATTY, AGED ABOUT 73 YEARS, KASABA AMSOM AND DESOM OF KOZHIKODE TALUK, NOW RESIDING AT VAZHUTHANAKAT COYIKKAL, THEKKE NADA, VAIKOM.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS - PLAINTIFF & DEFENDANTS:
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1. **V. SREEKUMARA MENON, ADVOCATE, "POORNIMA", CHALAPURAM, KOZHIKODE -2 (DIED)**

2. **P.C. CHERIYETTAN RAJA (DEAD), RESIDING IN MANKAVU VALAYANAD AMSOM AND DESOM, KOZHIKODE TALUK.**

3. **P.C. CHERIYANUJATHY THAMPURATTY, D/O. KUTTY ANUJATHY THAMPURATTY, DO. DO. NOW RESIDING AT VADAKKE SRAMBI, KANAKAVU PALACE, MANKAVU P.O., CALICUT - 7.**

4. **P.C. VEERARAYAN RAJA ALIAS CHERIAKUNHUNNI THAMBAN, S/O. ANUJATHY THAMBURATTY, "KOUSTHUBAM", THEKKETHODI, AZCHAVATTOM P.O., MANKAVU, CALICUT - 7.**

5. **P.C. VIKRAMAN RAJA ALIAS CHERIYATTAN RAJA, VADAKKE SRAMBI, MANKAVU PALACE, MANKAVU, CALICUT - 7.**

6. **P.C. GIRIJA THAMBURATTY, C/O. MANOHARA VARMA, "MAKARA JYOTHI", THEKKETHODI, AZCHAVATTOM P.O. MANKAVU, CALICUT - 7.**

7. **P.C. RAMANI THAMBURATTY, C/O. KERALA VARMA,**

KOCHI MADOM, PADANAYAR KULANGARA NORTH, P.O., KARUNAGAPPALLY, KOLLAM DISTRICT.

8. P.C. KRISHNAKUMARI THAMBURATTY, C/O. T.K. VIJAYA VARMA, IIND FLOOR, ROOM NO.16, SASIKANTH NIVAS, GANAPATHY PATEL CHOVEL, PATHURLI (VIA), GOGRASWADI, DOMBILVI (EAST) DISTRICT THANA, MAHARASHTRA.

9. P.C. MAHADEVI THAMBURATTY, VADAKKE SRAMBI, MANKAVU PALACE P.O. MANKAVU, CALICUT - 7.

10. P.C. MANAVIKRAMAN RAJA ALIAS ETTANUNNI THAMBAN, VADAKKE SRAMBI, MANKAVU PALACE, MANKAVU, CALICUT - 7.

11. P.C. MANAVEDAN RAJA ALIAS THAMBAN THAMBURAN, BY. EXECUTIVE ENGINEER, DESIGN DIVISION, 10-BUND GARDEN ROAD, P.O., PUNE.

12. P.C. KUNHETTAN RAJA, SREE NILAYAM, TALI, P.O. CHALAPURAM, CALICUT - 2.

13. M. SARADAVAYANKARAMMA, OPP. PONTHACOSTAL MISSION NEAR S.B.I. KALLEKULANGARA, PALAKKAD (DIED).

14. M. .JANARDANAN UNNI, DO. DO. (DIED)

15. M. HARIDASAN UNNI, DO. DO. NOW AT NEWYORK, U.S.A.

16. M. RAGHAVANUNNI, NO.16. LALL BAHADUR SASTHRI SOCIETY, BUS STATION ROAD, AHMMEDABAD - 362 001, GUJRAT.

RESPONDENTS 14, 15 AND 16 ARE RECORDED AS THE LEGAL HEIRS OF DECEASED R13 AS PER ORDER ON MEMO DATED 24.11.1993.

ADDITIONAL RESPONDENTS IMPLEADED:
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17. SARASWATHI, WIFE OF JANARDANAN UNNI, LIG NO.292, KADAVANTHRA, GANDHINAGAR, KOCHI - 20.

18. JYOTHI, D/O. JANARDANAN UNNI, DO. DO., REPRESENTED BY HER GUARDIAN 17TH RESPONDENT

THE ABOVE ADDITIONAL R17 AND R18 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED R14 VIDE ORDER DATED 12.3.207 ON C.M.P. NO.3465 OF 1993.

19. SMT. C.K. LEELA, WIFE OF LATE SREEKUMARA MENON, POORNIMA, CHALAPURAM P.O., KOCHIKODE.

20. SHRI C.K. JAYASANKAR, S/O. LATE SREEKUMARA MENON, DO.

21. SHRI C.K. MADHUSOODANAN, DO. DO. DO.

22. DR. C.K. MEENA, D/O. DO. DO. , NOW RESIDING AT ERNAKULAM.

ADDITIONAL RESPONDENTS 19 TO 22 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED R1 VIDE ORDER DATED 12.3.2007 IN I.A. NO.88 OF 2005.

BY ADV. SRI.P.RAVINDRAN
SRI.P.RANJITH
SRI.SARATH CHANDRAN. K

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 571 OF 1992

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Dated this the 24th day of October, 2007

J U D G M E N T

First defendant in O.S. No. 470 of 1983 on the file of the Sub Court, Kozhikode, is the appellant. Appeal is filed against the decree and judgment passed by the court below by which a decree was passed in favour of the first respondent allowing him to recover an amount of Rs.36,611.34 with interest on Rs.35,893.47 at 6% per annum from the date of suit till date of payment and also the cost of the proceedings. Plaintiff filed the suit for money.

2. Following were the material averments in the plaint: Plaintiff was an Advocate practicing in Kozhikode Bar. He appeared for several defendants in O.S. No.80 of 1964 which was pending before the Prl. Sub Court, Kozhikode, including the first defendant, who was the 185th defendant in that suit. In that suit a preliminary decree for partition was passed. Suit was one for partition of the estate of the Zamorin family of Kozhikode. Learned Sub Judge appointed two members of the

Zamorin family as joint receivers and they were managing the properties. The joint receivers filed a report as R.R. No.14 of 1976 seeking the permission of the court for sale of the Zamorin Palace and the compound adjoining the same to the Nair Service Society. Defendants 181 to 193 in that suit wanted the plaintiff herein, who was their lawyer, to object to the report of the receivers on the ground that the price fixed by the joint receivers and offered by NSS was very low. There were other prospective purchasers offering higher amounts. Plaintiff in his capacity as the counsel for the first defendant filed a detailed objection. Defendants 181 to 192 also wanted to have a settlement talk with NSS. They wanted the plaintiff to negotiate with Shri Karunakara Menon, who was the leader of the NSS at Kozhikode. Plaintiff went to the house of Shri Karunakara Menon on several occasions and ultimately NSS offered Rs.30,000/- to defendants 181 to 193 as special consideration on a condition that the said defendants should withdraw their objection against the sale. The amount of Rs.30,000/- was over and above the share which defendants 181 to 193 were entitled to get from the

actual sale consideration. Some other sharers also filed objection when they came to know the fact that NSS offered Rs.30,000/- to defendants 181 to 193. As agreed, NSS deposited Rs.30,000/- in the joint name of plaintiff, V. Karunakara Menon and K.K. Marar, Advocate then appearing for NSS, in the Bank of Cochin. Subordinate Court rejected the objection filed by the other sharers. They filed appeal. The matter was delayed and the amount deposited could not be withdrawn. Finally this Court dismissed that appeal. They filed an Appeal before the Supreme Court which resulted further delay. After the dismissal of the Civil Appeal by the Supreme Court amount deposited in the Bank of Cochin was withdrawn and cheque was issued to the first defendant with an authorisation letter by all the joint account holders to withdraw the amount. The cheque and authorisation were handed over to the first defendant for encashing the same. First defendant presented the cheque in the Kozhikode branch of the Bank on 27.7.1983 and an amount of Rs.39,543.64 was withdrawn. The said amount was due to 13 persons including the first defendant. Though the first defendant withdrew

the amount, he did not pay any amount to the plaintiff. First defendant had no right to keep the money with him. Plaintiff was under the bona fide belief that the first defendant will hand over money to the plaintiff so as to distribute the same among defendants 181 to 193. First defendant was entitled to only 1/13th share of the said amount. Defendants 181 to 193 had agreed to pay 10% of the amount received by them from NSS as Advocate fee, after receiving the same from NSS. When they received the amount from NSS, no fee was paid to the plaintiff. Plaintiff sent a registered notice demanding Rs.3,800/- as Advocate fee. First defendant sent a reply notice raising untenable contentions. Plaintiff was entitled to get 10% of the amount got from NSS as Advocate fee, after receiving the same from NSS. It was prayed that in case the court finds it difficult to pass a decree against the first defendant in favour of the plaintiff, a joint decree may be passed in favour of the plaintiff and defendants 2 to 12. Hence the plaintiff filed the suit for recovery of the amount of Rs.36,358/- after deducting his share.

3. First defendant filed a written statement denying

the allegations. The material contention raised by the first defendant were the following: During the relevant period first defendant was residing outside Kerala. So he entrusted his eldest brother Shri P.C. Cheriattan Raja, to conduct the case and he actually conducted the case till the stage of preliminary decree. No agreement in writing or oral fixing the Advocate fee was entered into at the time of executing the Vakalath. In fact himself and his brother opposed to the proposal of the receivers for sale of the property and they wanted 50 cents out of the palace compound for themselves for the construction of residential building. In view of the objections raised by the defendants, NSS raised their offer to Rs.3,60,000/-. First defendant and his brother demanded Rs.50,000/- as special consideration and ultimately NSS agreed to pay Rs.30,000/- to the first defendant alone if he withdraws his objection. First defendant and his brother accepted the said offer and informed the same to the plaintiff. Only the first defendant and the 187th defendant in the earlier suit conducted the proceedings. No other person except his brother is entitled to get any amount from the amount

received from NSS as special consideration. First defendant and his brother filed I.A. No.1411 of 1977 for allotment of 50 cents of land from the Palace compound for constructing a residential building. First defendant paid Rs.650/- as fee to the plaintiff besides meeting all expenses and clerical bills. Apart from the first defendant and his brother no other defendants were even aware of the offer made by NSS. The averment in paragraph 4 of the plaint that plaintiff was authorised to negotiate with NSS was denied. The amount of Rs.30,000/- deposited in the Bank by NSS exclusively belongs to first defendant and not to anyone else. The averment that the amount was deposited on account of the interim orders passed by this Court as well as the Supreme Court was denied. No other person was entitled to get the amount and the plaintiff is not entitled to get a decree with respect to that amount. Plaintiff is not entitled to get fee as claimed by him. Plaintiff, who appeared as a lawyer for the parties, had no right to demand such amount and as such the claim was made without those persons on the party array and it is only with the intention of misappropriating the amount that such a

demand was made. First defendant prayed for a dismissal of the suit. Subsequently he filed an additional written statement also. Second defendant filed a written statement contending that Rs.30,000/- does not belong to the first defendant alone and it belongs to other defendants also. Defendants 4, 5 and 10 filed a joint written statement contending that the amount belongs to other sharers also and it does not exclusively belong to the first defendant. The 12th defendant filed a written statement contending that the amount of Rs.30,000/- deposited by NSS belonged to himself and first defendant alone and not to any other defendants. He further contended that the fee claimed is excessive and it is a contingent fee.

4. The trial court, after considering the evidence, found that the amount belongs not only to defendants 1 and 12, but to all other sharers also. Court below also found that 10% of the amount claimed by the plaintiff is also legal and decreed the suit. Challenging the judgment and decree passed by the court below, first defendant has filed this appeal.

5. While the appeal was pending, plaintiff died and his legal representatives were impleaded. Learned counsel appearing for the appellant argued that the trial court went wrong in passing a decree allowing the first respondent as well as defendants 2 to 12 to recover the amount of Rs.30,000/-. It is argued that the specific case put forward by the first respondent was that NSS had agreed to purchase the property for an amount of Rs.3,60,000/- which was objected to by the appellant and defendants 2 to 12. It is argued that the appellant and the 12th defendant alone raised objections and they alone are entitled to the amount of Rs.30,000/-. Initially appellant alone was impleaded. But subsequently, other defendants were impleaded. They filed written statement contending that they are also entitled to a share in the amount of Rs.30,000/-. It is true that the cheque was issued to the appellant alone. First respondent was the Advocate, who represented not only the appellant but other defendants also. Evidence on record shows that the amount was deposited in the joint names of first respondent-plaintiff, V. Karunakara Menon and K.K.Marar. Though appellant raised

a contention that himself and 12th defendant alone were entitled to the amount, various objections filed before the trial court show that first respondent was appearing for other defendants also. Exhibit B1 affidavit filed by the appellant shows that it was not filed in his individual capacity, but for and on behalf of defendants 181 to 193 also. An application, I.A. No.1411 of 1977 was filed seeking permission to sell 50 cents of land to defendants 181 to 193. The affidavit filed in support of that application was also sworn to by defendants 1 and 2. But it was specifically averred that the affidavit was sworn to for and on behalf of defendants 181 to 184, 186, 188 and 193. Appellant was examined as D.W.1. The trial court after appreciating the evidence of D.W.1 held that it was full of inconsistencies and he came forward with an incredible story. Evidence also shows that defendants 181 to 193 file a review petition to review the order, but on account of the deposit of Rs.30,000/- that petition was not pressed. The court below after considering the pleadings and evidence came to the conclusion that it was in pursuance of the negotiation for the benefits of defendants 181 to 193 that

D.W.1 did not press I.A. No.1411 of 1977 and Exhibit B16 review petition. Exhibits X3 to X16 show that when some other amount was deposited in court, defendants 181 to 193 received the share due to each of them separately and issued receipts. The evidence adduced in the case clearly shows that Rs.30,000/- was not the amount paid to the appellant and 12th defendant alone, but it was given to defendants 181 to 193 and each of them is entitled to a share in the same. The finding of the court below that defendants 2 to 12 are entitled to get their share in the amount Rs.30,000/- is perfectly correct and it does not call for any interference. First respondent being an Advocate had a duty to see that the amount due to his clients are paid to them. That is why the court below passed a decree in favour of the first respondent and defendants 2 to 12. Now the first respondent is no more. The amount cannot be given to his heirs. Trial court had passed a decree in favour of defendants 2 to 12 also. I do not find any reason to interfere with that part of the decree. But the legal heirs of deceased first respondent are not entitled to execute that decree.

6. Now I shall consider the fee payable. Dispute is as to what exactly is the fee payable to the Advocate. Court below passed a decree allowing the first respondent to recover 10% as fee. According to the appellant that is a contingent fee. The evidence adduced in this case shows that action was initiated against him alleging that he committed professional misconduct and filed complaint before the Kozhikode Bar Council. First respondent filed appeal before the Kerala Bar Council and it found that the first respondent was not guilty and challenging that decision appellant filed appeal before the Central Bar Council. The Central Bar Council found the first respondent guilty. Against the same first respondent filed an appeal before the Supreme Court. The appeal filed by the first respondent was allowed holding that the 10% claimed by the first respondent was legal. It is argued by the learned counsel for the appellant that since the suit is one for partition of immovable property, Advocate can claim fixed fee prescribed under the Advocates Act. It is argued that this Court has framed rules regarding the fee payable to Advocates and in the Subordinate Court in original

suits fee can be claimed in accordance with Rule 6(2) of the Rules. It is argued that when a lawyer enters into an agreement claiming that he must get percentage of the amount, the same becomes contingent fee. It is argued that according to the first respondent the agreement was to pay 10% of the sale proceeds. It is argued that in a suit for partition fee payable to the Advocate is not fixed taking into account the value of the property. Learned Sub Judge has not considered whether the fee claimed by the first respondent is a contingent fee or not and whether he is entitled to any amount more than what is prescribed under the Rules framed by the High Court regarding fees payable. For considering that issue alone, the case has to go back.

7. In the result, appeal is allowed in part. The decree passed by the court below allowing defendants 2 to 12 to recover an amount of Rs.36,611.34 with interest at 6% on Rs.35,893.47 from the date of suit till date of deposit is confirmed. The finding of the court below regarding Advocate fee is set aside. That part of the case is remanded to the court below for fresh disposal in accordance with law.

8. Parties shall appear before the court below on 18.12.2007.

Civil Miscellaneous Petition No.7759 of 1992 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 571 OF 1992

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J U D G M E N T

24TH OCTOBER, 2007